

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MARK H. and RIE H., Individually
and as Guardians Ad Litem of
MICHELLE H. and NATALIE H.,
minors,

Plaintiffs,

vs.

PATRICIA HAMAMOTO, in her
official capacity as Superintendent of
the Hawaii Department of Education;
DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

Defendants.

CIVIL No. CV 00-00282 MLR/LEK
(Other Civil Action)

**DECLARATION OF MARK S.
DAVIS**

DECLARATION OF MARK S. DAVIS

I, MARK S. DAVIS, declare as follows:

1. I am an attorney at law licensed to practice before the United States District Court for the District of Hawaii.
2. I make this declaration following a conversation with my law partner Michael K. Livingston concerning his disability and emergency surgery which prohibits his appearance in federal court to argue the motion scheduled for September 11, 2008 at 10:00 a.m. in the above-mentioned case.

3. On March 29, 2008 Mr. Livingston suffered a severe multiple fracture of his tibia and fibula which resulted in an emergency surgery to repair the fracture which occurred in Vancouver, British Columbia. His leg was rebuilt with the application of 11 screws and a metal plate. He had a long period of recuperation as it was a very difficult fracture. Following a slow recovery he returned to Honolulu and resumed his practice as an attorney with the firm.

4. In mid-August he flew to California with his family to take his son to college as he is beginning his freshman year. Somewhere around August 19 he experienced pain for which he had his leg examined and it was discovered that the hardware in his leg had deteriorated. The plate had moved against the bone and 5 of the 11 screws had fractured. A copy of his X-ray was attached to the motion to continue as Exhibit "A". He was advised that he must immediately have surgery but it was a complicated one that required specialized skills.

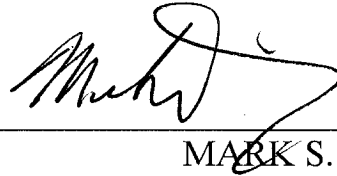
5. On August 28, 2008, Mr. Livingston finally identified an appropriate surgeon and he was operated on September 2. Mr. Livingston is presently under strong pain medication and has multiple catheters providing nourishment. This is a very complicated and difficult surgery. The surgeon has installed an exterior fixation device which requires him to be immobile and remain under the surgeon's care for approximately three weeks following the surgery.

6. It is anticipated that he will be unable to fly or return to Honolulu until the week of September 23. This information has been provided to me by Mr. Livingston.

7. The only other attorney who could handle the hearing is presently out of the country and will not be available for several weeks.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i September 3, 2008.

A handwritten signature in black ink, appearing to read "Mark S. Davis", is written over a horizontal line. The signature is stylized with a large, looping "M" and a long, sweeping "S".

MARK S. DAVIS